

Supreme Court, U.S.

FILED

FEB 9 1979

MICHAEL RODAK, JR., CLERK

In The

Supreme Court Of The United States

OCTOBER TERM, 1978

No. 78-1171

HUBERT SINGLETON, Petitioner

v.

STATE OF CONNECTICUT, Respondent

BRIEF IN OPPOSITION TO
PETITION FOR CERTIORARI

RESPONDENT

State of Connecticut

GEORGE D. STOUGHTON,
State's Attorney

95 Washington Street
Hartford, Connecticut

STATEMENT OF THE CASE

The Opinion of the Supreme Court of Connecticut, reprinted in the petitioner's Appendix, concisely summarizes the underlying facts as follows:

"The case arose out of the collision of two automobiles on a highway in Bristol at about 9 p.m. on September 23, 1973. One of the vehicles was operated by the defendant and the other by Renauld LaMarre who died as a result of the collision. The defendant was taken from the scene of the accident to the Bristol Hospital where a sample of his blood was taken and analyzed to determine the content of alcohol in his system....

There was evidence from which the jury could find that the defendant was returning from a club outing where he had had five or six drinks of scotch and water; that a short time before the collision he had driven his car into a curbing knocking off one of his hubcaps and while it was being replaced by a gas station attendant was observed to be weaving back and forth; that, thereafter, while driving in a southerly direction on a four-lane highway on which the lanes were marked he collided in the north-bound lane at a point ten and one-half feet east of the center line with a car driven by Renauld LaMarre causing LaMarre's death; that the impact of the

collision pushed the power brake assembly of the defendant's car against the dashboard, fixing the instruments at their approximate position as of the time of impact, and the speedometer needle on the defendant's car was thus fixed at a little over 100 miles per hour; and, further, that a blood test taken at the hospital to which the defendant was removed showed alcohol present in his blood in the amount of .18 percent by weight. There was also evidence that one may be under the influence of intoxicating liquor with less than .10 percent alcohol by weight and the higher the percentage is the greater is the degree of intoxication." *State v. Singleton*, 174 Conn. 112, 384 A.2d 334.

The petitioner, having elected a jury trial, was convicted of Misconduct with a Motor Vehicle, a felony with a maximum penalty of five years. Connecticut General Statutes, Sec. 53a-57. He has been sentenced to a term of one year, suspended after six months, and probation for three years; the execution of that sentence has been deferred pending finality of the present appeal process.

ARGUMENT

I

THE PETITION HAS NOT BEEN FILED IN COMPLIANCE WITH RULE 22.

The decision of the Connecticut Supreme Court which this petition seeks to review was released December 27, 1977. A motion to reargue in that court was denied on January 25, 1978. Subsequently, on motion by the petitioner, the Connecticut Supreme Court, on February 15, 1978, granted an indefinite stay of the petitioner's sentence to allow filing of the present petition. No such petition having been filed, the respondent, on September 8, 1978, moved the Connecticut Supreme Court to terminate the stay of execution. That Court, on October 4, 1978, ordered that the stay be terminated unless the petitioner applied for a writ of certiorari to this Court "on or before October 16, 1978." Thereafter, on October 16, 1978, the respondent was served with a copy of the present petition.

Rule 22(1) of the Rules of the United States Supreme Court allows ninety days from judgment for the filing of a petition for writ of certiorari, with a potential period of extension not exceeding sixty days. In the circumstances of the present case, taking the denial of the motion to reargue as the final judgment of the Connecticut Supreme Court, the time for filing the petition expired on or about April 25, 1978. Assuming a maximum extension under Rule 22(1), which apparently was neither sought nor granted, the time for filing would have

expired on or about June 24, 1978. Therefore the pending petition, dated October 10, 1978, should be denied.

II

**THE PETITION FAILS TO RAISE A
A FEDERAL QUESTION OF SUBSTANCE.**

The issues raised and argued in the present petition do not address substantial questions of federal or constitutional law. See Rule 19(1)(a). The governing principles of law have already been enunciated by this Court in *Schmerber v. California*, 384 U.S. 757, 16 L.Ed.2d 908, 86 S.Ct. 1826 (1966); *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); and *Cupp v. Murphy*, 412 U.S. 291, 296, 93 S.Ct. 2000, 36 L.Ed.2d 900 (1973). The unanimous opinion of the Connecticut Supreme Court is not in conflict with those decisions. The present petition should therefore be denied.

CONCLUSION

For the reasons set forth above, the respondent respectfully requests that the petition be denied.

Respondent, State of Connecticut

By: GEORGE D. STOUGHTON
State's Attorney